

By: Smithee

H.B. No. 746

A BILL TO BE ENTITLED

AN ACT

relating to policy forms and endorsements for personal automobile and residential property insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Insurance Code, is amended by adding Article 5.142 to read as follows:

Art. 5.142. POLICY FORMS FOR PERSONAL AUTOMOBILE INSURANCE
COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 1. SCOPE. This article governs the regulation of policy forms and endorsements for personal automobile insurance and residential property insurance.

Sec. 2. DEFINITIONS. In this article:

(1) "Filer" means an insurer that files forms or any other information required to be filed under this article.

(2) "Form" means any insurance policy form or endorsement form used in writing personal automobile insurance or residential property insurance in the state.

(3) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, fraternal benefit society, local mutual aid association, county mutual insurance company, association, Lloyd's plan company, or other entity writing personal automobile insurance or residential property insurance in the state. The term includes an affiliate, as described by Section 823.003(a) of this code. The term does not

1 include the Texas Windstorm Insurance Association created and
2 operated under Article 21.49 of this code.

3 (4) "Personal automobile insurance" means an
4 automobile insurance policy providing insurance coverages for the
5 ownership, maintenance, or use of private passenger, utility, and
6 miscellaneous type motor vehicles and trailers including mobile
7 homes and recreational trailers, and not primarily used for the
8 delivery of goods, materials, or services, unless such use is in
9 farm or ranch operations, and provided that such vehicles are owned
10 or leased by an individual or individuals.

11 (5) "Residential property insurance" means insurance
12 against loss to real or tangible personal property at a fixed
13 location provided in a homeowners policy, a tenant policy, a
14 condominium owners policy, or a residential fire and allied lines
15 policy.

16 Sec. 3. FORM FILINGS. (a) Each insurer shall file its
17 forms with the commissioner. The forms may not be delivered or
18 issued for delivery in the state unless the forms have been filed as
19 provided by this article. Insurers may continue to use the standard
20 policy forms and endorsements promulgated under Articles 5.06 and
21 5.35 of this code on notification to the commissioner in writing
22 that the forms will continue to be used.

23 (b) Unless disapproved by the commissioner as provided by
24 Section 7 of this article, the new form takes effect on the date
25 specified by the insurer in the filing, but not earlier than the
26 60th day after the date of filing of the form with the commissioner,
27 except as provided by Subsection (c) of this section. For the

1 purposes of this section, the date the form is received by the
2 commissioner is the date of filing of the form with the
3 commissioner. From the date of filing of the form with the
4 commissioner to the effective date of the new form, the insurer's
5 previously filed form that is in effect as provided by this article
6 shall remain in effect.

7 (c) The commissioner may approve a filing on written or
8 electronic notification to the filer at any time before the 60th day
9 after the date of filing of the form with the commissioner or before
10 the effective date specified by the insurer in the filing. The new
11 form may be used on the receipt of the notice of the commissioner's
12 approval.

13 (d) Each personal automobile insurance policy form must
14 provide the coverages mandated under Articles 5.06-1 and 5.06-3 of
15 this code, except that the coverages may be rejected by the named
16 insured as provided by those articles.

17 (e) All filed forms must comply with state and federal law.

18 Sec. 4. PLAIN LANGUAGE REQUIREMENT. A form may not be used
19 if it is not in plain language. For the purposes of this section, a
20 form is written in plain language if it achieves the minimum score
21 established by the commissioner on the Flesch reading ease test or
22 an equivalent test selected by the commissioner or, at the option of
23 the commissioner, if it conforms to the language requirements in a
24 National Association of Insurance Commissioners model act relating
25 to plain language. This section does not apply to policy language
26 that is mandated by state or federal law.

27 Sec. 5. PERSONAL AUTOMOBILE INSURANCE. A contract or

1 agreement not written into the application and personal automobile
2 insurance policy is void and of no effect and in violation of the
3 provisions of this article and Subchapter A of this chapter and is
4 sufficient cause for the revocation of the license of an insurer to
5 write personal automobile insurance in the state.

6 Sec. 6. PUBLIC INFORMATION. Each filing and any supporting
7 information filed under this article is open to public inspection
8 as of the date of the filing.

9 Sec. 7. DISAPPROVAL. (a) The commissioner may disapprove
10 a form filed under this article if the form:

11 (1) violates or does not comply with this code, or any
12 valid rule duly adopted by the commissioner, or is otherwise
13 contrary to law; or

14 (2) contains provisions or has any titles or headings
15 which are unjust, encourage misrepresentation, are deceptive, or
16 violate public policy.

17 (b) If the commissioner disapproves a filing before the 60th
18 day after the date of the filing of the form with the commissioner,
19 the commissioner shall issue an order specifying in what respects
20 the form fails to meet the requirements of this article. The filer
21 is entitled to a hearing on written request made to the commissioner
22 not later than the 30th day after the effective date of the
23 disapproval order.

24 (c) If the commissioner disapproves a form that is in
25 effect, the commissioner may issue a disapproval order only after a
26 hearing held after at least 20 days' written notice to the insurer
27 that made the filing. The disapproval order must be issued not

1 later than the 15th day after the close of the hearing and must
2 specify how the form fails to meet the requirements of this article.
3 The disapproval order must state the date on which the further use
4 of the disapproved form is prohibited.

5 (d) A commissioner's order disapproving a form must state
6 the grounds for the disapproval in enough detail to reasonably
7 inform the filer of the grounds.

8 (e) An insurer may not use a form in the state after
9 disapproval of the form by the commissioner.

10 Sec. 8. PUBLIC INSURANCE COUNSEL. Notwithstanding Article
11 1.35A of this code, the office of public insurance counsel may
12 submit written comments to the commissioner and otherwise
13 participate regarding individual company filings made under this
14 article.

15 Sec. 9. HEARINGS. Subject to Chapter 40 of this code,
16 Chapter 2001, Government Code, applies to all hearings conducted
17 under this article. To the extent of any conflict between this
18 article and Chapter 2001, Government Code, the provisions of this
19 article prevail.

20 Sec. 10. RULEMAKING. The commissioner may adopt reasonable
21 and necessary rules to implement this article.

22 SECTION 2. Article 5.06, Insurance Code, is amended by
23 adding Subsection (12) to read as follows:

24 (12) Notwithstanding Subsections (1)-(8) of this
25 article, policy forms and endorsements for personal automobile
26 insurance in this state shall be regulated under Article 5.142 of
27 this code. An insurer may continue to use the standard policy forms

1 and endorsements promulgated under this article that the insurer
2 used immediately before the effective date of this subsection on
3 notification to the commissioner in writing that the forms will
4 continue to be used.

5 SECTION 3. Article 5.35, Insurance Code, is amended by
6 adding Subsection (k) to read as follows:

7 (k) Notwithstanding Subsections (a)-(j) of this article,
8 policy forms for residential property insurance in this state shall
9 be regulated under Article 5.142 of this code. An insurer may
10 continue to use the standard policy forms and endorsements
11 promulgated under this article that the insurer used immediately
12 before the effective date of this subsection on notification to the
13 commissioner in writing that the forms will continue to be used.

14 SECTION 4. Section 4, Article 5.01C, Insurance Code, is
15 amended to read as follows:

16 Sec. 4. FORMS. An insurer selling short-term liability
17 insurance policies under this article must use the policy forms
18 adopted by the commissioner under Article 5.06 of this code or filed
19 and in effect as provided by Article 5.142 of this code unless the
20 insurer is exempt from using those forms.

21 SECTION 5. Section (2), Article 5.06-1, Insurance Code, is
22 amended to read as follows:

23 (2) For the purpose of these coverages: (a) the term
24 "uninsured motor vehicle" shall, subject to the terms and
25 conditions of such coverage, be deemed to include an insured motor
26 vehicle where the liability insurer thereof is unable to make
27 payment with respect to the legal liability of its insured within

1 the limits specified therein because of insolvency.

2 (b) The term "underinsured motor vehicle" means an
3 insured motor vehicle on which there is valid and collectible
4 liability insurance coverage with limits of liability for the owner
5 or operator which were originally lower than, or have been reduced
6 by payment of claims arising from the same accident to, an amount
7 less than the limit of liability stated in the underinsured
8 coverage of the insured's policy.

9 (c) The commissioner [~~Board~~] may, in the policy forms
10 adopted under Article 5.06 of this code, define "uninsured motor
11 vehicle" to exclude certain motor vehicles whose operators are in
12 fact uninsured. The commissioner may in the policy forms filed
13 under Article 5.142 of this code allow the term "uninsured motor
14 vehicle" to be defined to exclude certain motor vehicles whose
15 operators are in fact uninsured.

16 (d) The portion of a policy form adopted under Article
17 5.06 of this code or filed under Article 5.142 of this code to
18 provide coverage under this article shall include provisions that,
19 regardless of the number of persons insured, policies or bonds
20 applicable, vehicles involved, or claims made, the total aggregate
21 limit of liability to any one person who sustains bodily injury or
22 property damage as the result of any one occurrence shall not exceed
23 the limit of liability for these coverages as stated in the policy
24 and the total aggregate limit of liability to all claimants, if more
25 than one, shall not exceed the total limit of liability per
26 occurrence as stated in the policy; and shall provide for the
27 exclusion of the recovery of damages for bodily injury or property

1 damage or both resulting from the intentional acts of the insured.
2 The portion of a policy form adopted under Article 5.06 of this code
3 or filed under Article 5.142 of this code to provide coverage under
4 this article shall require that in order for the insured to recover
5 under the uninsured motorist coverages where the owner or operator
6 of any motor vehicle which causes bodily injury or property damage
7 to the insured is unknown, actual physical contact must have
8 occurred between the motor vehicle owned or operated by such
9 unknown person and the person or property of the insured.

10 SECTION 6. Article 5.06-6, Insurance Code, is amended to
11 read as follows:

12 Art. 5.06-6. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A
13 personal automobile policy or any similar policy form adopted or
14 approved by the commissioner [~~State Board of Insurance~~] under
15 Article 5.06 of this code or filed under Article 5.142 of this code
16 that covers liability arising out of ownership, maintenance, or use
17 of a motor vehicle of a spouse, who is otherwise insured by the
18 policy, shall contain a provision to continue coverage for the
19 spouse during a period of separation in contemplation of divorce.

20 SECTION 7. Article 5.25-2, Insurance Code, is amended to
21 read as follows:

22 Art. 5.25-2. CITY FIRE LOSS LISTS

23 Sec. 1. In this article,

24 [~~(1)~~] "list" means the list of fire and lightning
25 losses in excess of \$100 paid under policy forms adopted or approved
26 by the commissioner [~~board~~] under Article 5.35 of this code or filed
27 and in effect as provided by Article 5.142 of this code [~~subchapter~~]

1 in a particular city or town prepared by the department [~~State Board~~
2 ~~of Insurance~~] for distribution to the city or town[+]

3 [~~(2) "board" means the State Board of Insurance~~].

4 Sec. 2. (a) The department [~~board~~] shall compile for each
5 city or town in Texas a list of the insured fire losses paid under
6 policy forms adopted or approved by the commissioner [~~board~~] under
7 Article 5.35 of this code or filed and in effect as provided by
8 Article 5.142 of this code [~~subchapter~~] in that city or town for the
9 preceding statistical year.

10 (b) The list shall include:

11 (1) the names of persons recovering losses under
12 policy forms adopted or approved by the commissioner [~~board~~] under
13 Article 5.35 of this code or filed and in effect as provided by
14 Article 5.142 of this code [~~subchapter~~];

15 (2) the addresses or locations where the losses
16 occurred; and

17 (3) the amount paid by the insurance company on each
18 loss.

19 (c) The department [~~board~~] shall obtain the information to
20 make the lists from insurance company reports of individual losses
21 during the statistical year.

22 Sec. 3. Upon the request of any city or town, or its duly
23 authorized agent or fire marshall, the department [~~board~~] shall
24 provide that city and town with a copy of the list for its
25 particular area.

26 Sec. 4. Each city or town shall investigate its list to
27 determine the losses actually occurring in its limits and shall

1 make a report to the department [~~board~~] which report shall include:

2 (1) a list of the losses that actually occurred in the
3 limits of the city or town;

4 (2) a list of any losses not occurring in the limits of
5 the city or town; and

6 (3) other evidence essential to establishing the
7 losses in the city or town.

8 Sec. 5. The department [~~board~~] shall make such changes or
9 corrections as to it shall seem appropriate in order to correct the
10 list of insured fire and lightning losses paid under policy forms
11 adopted or approved by the commissioner [~~board~~] under Article 5.35
12 of this code or filed and in effect as provided by Article 5.142 of
13 this code [~~subchapter~~] in a particular city or town and said list of
14 losses, as changed or corrected, shall be used to determine the fire
15 record credit or debit for each particular city or town for the next
16 year.

17 Sec. 6. The commissioner [~~board~~] shall set and collect a
18 charge for compiling and providing a list of fire and lightning
19 losses paid under policy forms adopted or approved by the
20 commissioner [~~board~~] under Article 5.35 of this code or filed and in
21 effect as provided by Article 5.142 of this code [~~subchapter~~] in a
22 particular city or town and as the commissioner [~~board~~] shall deem
23 appropriate to administer the fire record system.

24 Sec. 7. The department [~~board~~] is authorized to require
25 each and every city or town in the State of Texas and each and every
26 insurance company or carrier of every type and character whatsoever
27 doing business in the State of Texas to furnish to it a complete and

1 accurate list of all fire and lightning losses occurring within the
2 State of Texas and reflected in their records for the purpose of
3 accumulating statistical information for the control and
4 prevention of fires.

5 Sec. 8. The department [~~board~~] may, at its discretion,
6 furnish such list only during such time as the fire record system
7 remains in force and effect.

8 SECTION 8. Article 5.35-1, Insurance Code, is amended to
9 read as follows:

10 Art. 5.35-1. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A
11 homeowner's policy or fire policy promulgated under Article 5.35 of
12 this code or filed and in effect as provided by Article 5.142 of
13 this code may not be delivered, issued for delivery, or renewed in
14 this state unless the policy contains the following language: "It
15 is understood and agreed that this policy, subject to all other
16 terms and conditions contained in this policy, when covering
17 residential community property, as defined by state law, shall
18 remain in full force and effect as to the interest of each spouse
19 covered, irrespective of divorce or change of ownership between the
20 spouses unless excluded by endorsement attached to this policy
21 until the expiration of the policy or until canceled in accordance
22 with the terms and conditions of this policy."

23 SECTION 9. Article 5.36, Insurance Code, is amended to read
24 as follows:

25 Art. 5.36. WRITTEN EXPLANATION OF CERTAIN ENDORSEMENTS
26 REQUIRED. An insurer may not use an endorsement to a policy form to
27 which Article 5.35 of this code or Article 5.142 of this code

1 applies that reduces the amount of coverage, unless requested by
2 the insured, that would otherwise be provided under the policy
3 unless the insurer provides the policyholder with a written
4 explanation of the change made by the endorsement before the
5 effective date of the change.

6 SECTION 10. Article 5.50, Insurance Code, is amended to
7 read as follows:

8 Art. 5.50. EXCEPTIONS. This subchapter shall not apply to
9 farm mutual insurance companies operating under Chapter 16 of this
10 Code or to any company now operating under Chapter 12 of Title 78
11 which has heretofore been repealed, and none of the Articles of this
12 subchapter, except Articles 5.35, 5.36, 5.37, 5.38, 5.39, 5.40, and
13 5.49, shall apply to other purely mutual or to other purely profit
14 sharing fire insurance companies incorporated or unincorporated
15 under the laws of this State~~[7]~~ and carried on by the members
16 thereof solely for the protection of their property and not for
17 profit. Article 5.142 of this Code shall apply to other purely
18 mutual or to other purely profit sharing fire insurance companies
19 incorporated or unincorporated under the laws of this State and
20 carried on by the members thereof solely for the protection of their
21 property and not for profit.

22 SECTION 11. Section 8, Article 21.77, Insurance Code, is
23 amended to read as follows:

24 Sec. 8. POLICY FORMS. All policy forms for insurance
25 written under this article shall be prescribed by the commissioner
26 ~~[board]~~ as provided in Article 5.06 of this code or filed and in
27 effect as provided in Article 5.142 of this code~~[7, Insurance Code]~~.

1 SECTION 12. Section 912.152, Insurance Code, is amended to
2 read as follows:

3 Sec. 912.152. POLICY FORMS. (a) A county mutual insurance
4 company is subject to Articles 5.06, ~~[and]~~ 5.35, and 5.142 of this
5 code.

6 (b) County ~~[The commissioner, in accordance with Article~~
7 ~~5.35, may adopt for use by county]~~ mutual insurance companies shall
8 file policy forms under Article 5.142 of this code or continue to
9 use the standard policy forms and endorsements promulgated under
10 Articles 5.06 and 5.35 of this code on notification to the
11 commissioner in writing that the forms will continue to be used
12 ~~[uniform policy forms that differ from the forms adopted for use by~~
13 ~~other companies and shall prescribe the conditions under which a~~
14 ~~county mutual insurance company:~~

15 ~~[(1) may use the policy forms adopted under this~~
16 ~~subsection; or~~

17 ~~[(2) shall use the policy forms adopted for other~~
18 ~~companies].~~

19 SECTION 13. Subsection (b), Section 941.003, Insurance
20 Code, is amended to read as follows:

21 (b) A Lloyd's plan is subject to:

- 22 (1) Section 5, Article 1.10;
23 (2) Article 1.15A;
24 (3) Subchapter A, Chapter 5;
25 (4) Articles 5.142, 5.35, 5.38, 5.39, 5.40, and 5.49;
26 (5) Articles 21.21 and 21.49-8; and
27 (6) Sections 822.203, 822.205, 822.210, and 822.212.

1 SECTION 14. Subsection (b), Section 942.003, Insurance
2 Code, is amended to read as follows:

3 (b) An exchange is subject to:

- 4 (1) Section 5, Article 1.10;
5 (2) Articles 1.15, 1.15A, and 1.16;
6 (3) Subchapter A, Chapter 5;
7 (4) Articles 5.142, 5.35, 5.37, 5.38, 5.39, and 5.40;
8 (5) Articles 21.21 and 21.49-8; and
9 (6) Sections 822.203, 822.205, 822.210, 822.212,
10 861.254(a)-(f), 861.255, 862.001(b), and 862.003.

11 SECTION 15. Subsection (d), Section 502.153,
12 Transportation Code, is amended to read as follows:

13 (d) A personal automobile policy used as evidence of
14 financial responsibility under this section must comply with
15 Article 5.06 or Article 5.142, Insurance Code.

16 SECTION 16. Subsection (c), Section 521.143,
17 Transportation Code, is amended to read as follows:

18 (c) A personal automobile insurance policy used as evidence
19 of financial responsibility under this section must comply with
20 Article 5.06 or Article 5.142, Insurance Code.

21 SECTION 17. The commissioner of insurance shall adopt rules
22 necessary to implement Article 5.142, Insurance Code, as added by
23 this Act, not later than the 120th day after the effective date of
24 this Act.

25 SECTION 18. This Act applies only to an insurance policy
26 that is delivered, issued for delivery, or renewed on or after the
27 120th day after the effective date of this Act. A policy delivered,

1 issued for delivery, or renewed before the 120th day after the
2 effective date of this Act is governed by the law as it existed
3 immediately before the effective date of this Act, and that law is
4 continued in effect for that purpose.

5 SECTION 19. This Act takes effect June 1, 2003, if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for effect on that
9 date, this Act takes effect September 1, 2003.